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LOK SABHA

The following Report of the Select Committee on the Bill further to amend the Companies Act, 1956 was presented to Lok Sabha on the 9th December, 1963:—

COMPOSITION OF THE SELECT COMMITTEE

Shri S. V. Krishnamoorthy Rao—*Chairman*.

MEMBERS

2. Shri Ramchandra Vithal Bade
3. Shri S. M. Banerjee
4. Shri Rajendranath Barua
5. Shri P. C. Borooah
6. Shri Sachindra Chaudhuri
7. Shri Indrajit Gupta
8. Shri R. K. Khadilkar
9. Shri T. T. Krishnamachari
10. Shrimati T. Lakshmi Kanthamma
11. Shri M. R. Masani
12. Shri P. Muthiah
13. Shri C. R. Raja
14. Shri Sridheshwar Prasad
15. Shri G. G. Swell
16. Shri Mahavir Tyagi
17. Shri Amar Nath Vidyalankar
18. Shri R. R. Morarka.

DRAFTSMAN

1. Shri S. P. Sen Verma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

(983)

3. Shri R. S. Gae, *Joint Secretary and Legal Adviser, Department of Legal Affairs, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri V. T. Dehejia, *Secretary, Ministry of Finance.*
2. Shri B. S. Manchanda, *Joint Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*
3. Shri V. Satyamurti, *Deputy Secretary, Ministry of Finance, Department of Revenue (Company Law Division).*

SECRETARIAT

Shri G. V. Mirchandani—*Under Secretary.*

REPORT OF THE SELECT COMMITTEE

1. The Chairman of the Select Committee to which the Bill* further to amend the Companies Act, 1956 was referred, having been authorised to submit the report on their behalf, present their report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 26th November, 1963. The motion for consideration of the Bill was moved by Shri T. T. Krishnamachari, Minister of Finance, on the 28th November, 1963. An amendment to the motion for reference of the Bill to a Select Committee was moved by Shri R. R. Morarka on the 28th November, 1963 and was discussed and adopted on the same day.

3. The Committee held four sittings in all.

4. The first sitting of the Committee was held on the 2nd December, 1963. The Committee, at this sitting, considered the requests received from some Associations for permission to give oral evidence before the Committee and decided to hear evidence of the Associations desirous of presenting their suggestions or views before the Committee.

Pending the hearing of oral evidence on the Bill, the Committee decided to consider tentatively the clauses of the Bill.

5. At their first and second sittings held on the 2nd and 3rd December, 1963, the Committee considered tentatively the clauses of the Bill.

6. Seven memoranda on the Bill were received by the Committee from different Associations.

7. At their third sitting held on the 6th December, 1963, the Committee heard the evidence given by the representatives of five Associations.

8. The Committee have decided that the evidence given before them should be laid on the Table of the House *in extenso*.

9. The Committee considered the Bill clause by clause at their fourth sitting held on the 7th December, 1963.

10. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

11. *Clause 3.—(a) Proposed Section 10A.*—The Committee are of the opinion that the powers and functions conferred on the Court by the Companies Act, 1956 which the Tribunal may exercise or discharge, when so specified by the Central Government by notification in the Official Gazette, should be limited to those covered by

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 26th November, 1963.

or under sections 155, 203 (in so far as it relates to the granting of leave under that section), 240 and 397 to 407 only.

The Committee feel that the Chairman of the Tribunal should always be a person who is, or has been, or is qualified to be, a Judge of a High Court.

The other amendments are of a drafting nature.

(b) *Proposed Section 10B.*—The Committee feel that every Bench of the Tribunal should consist of not less than two members of whom at least one should be a person having knowledge of, and experience in, law and if there is any change in the membership of a Tribunal, the proceedings should be continued as if the members appointed later were on the Tribunal from the commencement of the proceedings.

The other amendment is of consequential nature.

(c) *Proposed Section 10C.*—The amendments made are clarificatory in nature.

(d) *Proposed Section 10D.*—The Committee are of the view that in cases against managerial personnel under Chapter IVA of Part VI an appeal should lie to the High Court only on questions of law arising out of the findings of the Tribunal under section 388D and in cases not falling under that Chapter an appeal should lie only on questions of law arising out of any decision, order or findings of the Tribunal.

The clause has been amended accordingly.

12. *Clause 4.*—The amendment made in the clause is of a drafting nature.

13. *Clause 5.*—(a) *Proposed sub-section (4) of Section 81.*—The Committee consider that the Central Government should direct the conversion of debentures or loans into shares in the company only when in the opinion of the Central Government public interest so demands. The Committee, however, feel that in respect of debentures issued and loans obtained by a company before the commencement of this Bill when enacted, no such conversion should be directed unless the company has made default in repayment of the amount of the debentures or loans with interest thereon or in the compliance with any other terms of such debentures or loans and the company has failed to remedy the default within three months of the service of a notice in this behalf.

(b) *Proposed sub-sections (5) and (6) of Section 81.*—The amendments made are of a drafting nature.

The clause has been amended accordingly.

14. *Clause 6.—(New Clause).*—The amendment made in section 153 of the parent Act by this new clause is considered necessary in view of the provisions of the proposed new sections 153A and 153B.

15. *Clause 7.—(Original Clause 6).*—(a) *Proposed Section 153B (2).*—The Committee feel that a trustee should send to the company concerned a copy of the declaration made by him under sub-section (1) of Section 153B within a fixed period of 21 days.

(b) *Proposed Section 153B (3).*—The Committee consider that failure to make a declaration of the trust to the public trustee should be punishable only with fine and that making a false statement in the declaration knowingly should be punishable more severely with imprisonment.

The clause has accordingly been suitably amended.

16. *Clause 8.—(Original Clause 7).*—The Committee feel that the appointment of a person as public trustee should appropriately find a place not in proposed new section 187B but in a separate section immediately after section 153 of the Act.

The Committee further consider that on the appointment of the public trustee the rights and powers of every trustee to whom proposed section 187B applies, exerciseable by the trustee in meetings of the company, should become exerciseable by the public trustee but the public trustee instead of himself exercising those rights and powers may appoint any officer of Government or the trustee himself as his proxy; such officer of Government or the trustee should, however, exercise those rights and powers in accordance with the directions of the public trustee but where the trustee is appointed as the proxy the trustee should be entitled to exercise the rights and powers in the same manner as he would have been but for the provisions of the proposed section.

It has also been provided in the proposed section that the public trustee may abstain from exercising his rights and powers under this section if in his opinion the interests of the trust would not be adversely affected thereby; the trustee, however, may communicate his views to the public trustee that there should be no abstention by the public trustee in the matter of exercising the voting rights and the public trustee may in his discretion either accept those views or reject the same.

The clause has been redrafted accordingly.

17. *Clause 9.—(Original Clause 8).*—(a) *Proposed Section 388B.*—The Committee feel that only persistent negligence or default of any person concerned in the conduct and management of the affairs of a company should bring him under the purview of the proposed section 388B.

The other amendments are clarificatory in nature.

(b) *Proposed Section 388B.*—The amendment is of a drafting nature.

(c) *Originally proposed Section 388E.*—This section has been omitted as the provisions thereof are covered by the proposed section 10D in clause 3.

(d) *Proposed new Section 388E.*—(*Original proposed Section 388F.*)—The Committee are of the view that the Central Government may, with the previous concurrence of the Tribunal, permit any managerial personnel removed from office, to hold any managerial office before the expiry of the statutory period of five years. The proposed section has been amended accordingly.

The clause has been amended accordingly.

18. Clauses 10, 11 and 12 correspond to original clauses 9, 10 and 11, respectively.

19. *Original Clause 12.*—The clause has been deleted, in view of the more comprehensive provision inserted in clause 14 as proposed sub-section (2A) of section 637 of the principal Act (*See para 20 below*).

20. *Clause 14.*—(a) *Proposed sub-section (1) (a) of Section 637.*—The Committee feel that the power of the Central Government to appoint a person as public trustee under the proposed section 153A should not be delegated to the Company Law Board.

(b) *Proposed sub-section (2) of Section 637.*—The Committee are of the opinion that the powers and functions under section 81 should also not be delegated to any other authority or officer.

(c) *Proposed sub-section (2A) of Section 637.*—The Committee feel that the provisions of the Act should apply in relation to the Company Law Board as they apply in relation to the Central Government in respect of any matter in relation to which the powers and functions of the Central Government are delegated to the Company Law Board.

The clause has been amended accordingly.

21. The Select Committee recommend that the Bill as amended be passed.

NEW DELHI;

S. V. KRISHNAMOORTHY RAO,

Chairman,

The 7th December, 1963,

Select Committee.

MINUTES OF DISSENT

I

The Report of the Select Committee on this Bill shows that the brief reference of the Bill to a Select Committee has been more than justified. Among the several useful changes made in the Bill, there are two modifications which will to a large extent meet the strong exception taken to the Bill by large sections of public opinion and the press.

The first of these is the elimination of the power proposed to be left to Government to transfer to a Tribunal to be set up under the Bill by notification from time to time various powers of the Courts of Law. The second major improvement is the exclusion from the mischief of Clause 5 of the Bill, except only in case of default on the part of a company, or companies which had taken loans from a creditor of the company to its shareholder. We welcome the change giving power to the Government unilaterally to convert itself from a creditor of the company to its shareholder. We welcome this change because, otherwise, there was ground for the charge that the power of unilateral action given to Government retrospectively would have amounted to a breach of contract and of faith and would have damaged, at home and abroad, India's credit as a country that has so far scrupulously adhered to its contractual obligations.

All the same, we regret that several blemishes still remain in the Bill as reported by the Select Committee.

The one that towers over all others is to be found in Clauses 7 and 8 which give Government the right to deprive all trustees of their right to vote as shareholders of joint stock companies and to transfer this right to a Public Trustee appointed by Government. No case has to be made out against any trustee or trustees for expropriating them of this right of theirs and no right of appeal is proposed to those so expropriated. We note that in paragraph 2 of the Statement of Objects and Reasons appended to the Bill it has been stated that: "In order to prevent the use of voting rights attached to shares held by trusts for the advancement of the personal interests of the donors, it is considered necessary to regulate the exercise of such rights in suitable cases." It is a matter of regret to us that our plea that the deprivation of voting rights should only operate in the case of trustees who were found to be using their voting rights for the advancement of their personal interests or of those of the donors was not accepted by the Select Committee. This is one of the increasing number of cases where the provisions of a law bear little

relation to the Statement of Objects and Reasons appended to the Bill. The provisions are also inconsistent with the assurance given by the Hon. Finance Minister on the floor of the House on 28th November 1963 that there would be an amendment exempting "genuine trusts created for safeguarding family interests or charitable or educational trusts."

We consider Clauses 7 and 8 of the Bill as embodied in the Report of the Select Committee to be nothing less than outrageous. There are three facets of the right of a shareholder, whether he happens to be a trustee or otherwise. The first is the right to a dividend, the second is his right to his capital and any capital appreciation that may take place, and the third and perhaps the most valuable right is that of participating in the control and management of the enterprise through the exercise of his right as a shareholder. To deprive trustees of this right without any rhyme or reason, without any recourse to a Court of Law for justice or redress is to us a proposal of a shocking nature which should have no place in a free society. What justification can there possibly be for such a drastic power? As the Bill now stands, an official of Government would be competent to deprive a citizen of his valuable right as a shareholder without anything whatsoever being proved or even alleged against him.

In our view, in order to make a provision of this nature appropriate in a democracy, the least that could be done is to modify this clause by providing for the following:

- (i) Limitation of this provision to public charitable trusts, in regard to which there are tax concessions, holding shares in public limited companies;
- (ii) The restriction of this provision to cases where the trustee is proved to have acted either in his own interest or in the interests of the settlor or otherwise in a way adverse to the interests of the Trust;
- (iii) A provision that the trustee should be given the right of being heard in regard to the grounds on which he is proposed to be deprived of his voting rights and a right to appeal to the Courts against the decision depriving him of his right to vote.

Among other provisions of the Bill as reported by the Select Committee to which we would like to draw attention with a view to their modification are the following:

1. In Clause 3 of the Bill, the right of appeal afforded to a person against whom a finding has been arrived at by

a Tribunal is restricted only to matters of law arising out of such a finding. We consider this right of appeal to be unduly restrictive and would suggest its being extended to any other question with the leave of the Court.

2. In Clause 9 which provides for the circumstances in which a person concerned with the conduct and management of the affairs of a Company can be removed from his position are included grounds which appear to us to be altogether out of place, such as, negligence or that the business of the company "is not or has not been conducted or managed by such a person in accordance with sound business principles or prudent commercial practices."

While we are in agreement with the other parts of the clause which would permit the removal from office of a person guilty of fraud, misfeasance or persistent default or conduct which is unlawful, we believe that the question whether or not a business is being conducted prudently or on sound business principles is not one which should be referred to a Tribunal or one which is capable of judicial or quasi-judicial examination. Commercial prudence and sound business practice are matters in regard to which there can be legitimate difference of opinion and those who risk their capital or the business should be the sole judges of such issues. To place in judgement over their business decisions officials of government or members of a Tribunal who may have no knowledge or how to conduct a business and who have no record of business success which would qualify them to judge others is, in our view, something that will paralyse people in business from taking decisions and retard the economic progress of the country. The record of the present Government in regard to the management of its own enterprises in the State sector is hardly such as to warrant the arrogation of any superiority.

3. We see no reason whatsoever for the provision that the previous approval of the Central Government should be required under Clause 9 [Section 388E Sub-clause (5)] in all cases where a successor is to be nominated to an office vacated by removal of the previous incumbent. No doubt such approval would have to be

obtained in the case of those offices in respect of which the Companies Act requires such previous approval, but it is difficult to see why it is sought to extend the right of the Government to withhold approval to appointments to other offices where the Companies Act does not provide for such approval just because a particular incumbent has been disqualified.

NEW DELHI;

M. R. MASANI.

Dated the 7th December, 1963. RAM CHANDRA VITHAL BADE

II

We do not agree with the proviso inserted by the Select Committee to the proposed sub-section (4) of section 81 in clause 5 of the Bill, inasmuch as it restricts the operation of that sub-section only to cases of default continuing after notice has been served in the matter. We think the Government should be given unrestricted power to take action in respect of loans granted even prior to the commencement of the Companies (Amendment) Act, 1963, where the Government deems fit to do so in the public interest. Considerations of public interest may not be restricted to cases of default only but may apply even to cases where in the opinion of the Government the larger interests of the community consistent with the socio-economic objects of the State demand conversion of loan into equity capital; the Government should, therefore, be armed with adequate powers under the law in this behalf.

NEW DELHI;

AMAR NATH VIDYALANKAR.

Dated the 9th December, 1963.

INDRAJIT GUPTA.

III

I. The Statement of Objects and Reasons attached to the Bill emphasises the necessity of setting up a Tribunal "in order to facilitate quick action" against persons involved in fraudulent malpractices and mis-management of companies.

I feel that this laudable object of quick action will not be realised by the provisions of the Bill as they have emerged from the Select Committee. On the contrary, there is a grave risk that the accused persons would be enabled to circumvent any intended quick action by simple resort to the various delaying procedures which have been laid down in the Bill. This would defeat the very purpose of constituting such Tribunals.

Under Section 388D (Clause 9 of the Bill) the Tribunal can record its "findings", and any question of law arising therefrom may be the subject of appeal to the High Court. Similarly, any order of Government made on the basis of the Tribunal's findings can be appealed against. Further, there is nothing explicitly provided in Section 388C to exclude even interim "orders" of the Tribunal from the scope of appeals to the High Court, although this might entail serious interference with, and obstruction to, the normal functioning of the Tribunal during pendency of a case before it.

Even after the Tribunal has recorded its finding in favour of removal of a person from his managerial post, he is given an undefined right, under Section 388E(2), to "show cause" why he should not be dealt with as per the Tribunal's findings. Even if the provision for a show cause notice is justified, there must be Rules made under the Act to define clearly a procedure and time limit for issue and disposal of such notice. But in the absence of any assurance that such definition will be made, the show cause stage may become a pretext for endless delay and procrastination by both the guilty person and the Government which alone has the power to order his removal.

For the above reasons, I strongly feel that the efficacy of the Tribunals as instruments for quick action may get seriously blunted. Hence, Sections 388D and 388E should be amended to bring them in line with the basic objects and reasons of the Bill.

II. The original Bill, as introduced, stipulated that a person removed from office by order of the Government would be debarred for a period of five years from holding any office connected with company management. The Select Committee has held [Section 388E(3)] that the Government, with the Tribunal's approval, can permit any such person to resume or hold office again before the expiry of five years. I am opposed to this provision. A person whose removal was considered necessary by both the Tribunal and the Government should not be permitted to reoccupy any responsible managerial office during the full statutory period of five years. If even this deterrent penalty can be watered down, there will be no seriousness left in the provision for removal.

In my opinion, if the Tribunal's findings and orders are continually challenged in the Court, if its findings are not accepted by Government, and if persons found guilty by it are frequently allowed to resume office even before five years from the date of removal, the cumulative result might be the reluctance of any self-respecting person to serve as a member of the Tribunal.

III. *Clauses 4 and 14.*—These two clauses make it amply clear that the proposed Board of Company Law Administration can exercise only such powers and functions as are delegated to it by Government and subject to specified conditions, restrictions and limitations. The power to appoint public trustees is explicitly not to be delegated to the Board.

While the statutory relationship between the Government and the Board may have been correctly defined in the Bill, the question arises: why is this opportunity of fresh legislation not being utilised to invest the Board with the comprehensive range of subjects entrusted till 5th September, 1956 to the former Department of Company Law Administration? Such an investment would have reinforced the Board's ability and capacity to strengthen administrative control over all inter-connected subjects dealing with the management and financing of joint stock companies, *viz.*, administration of the Companies Act, of Capital Issue Control, Accountancy, Stock Exchanges and various Financial Corporations.

I feel that the provisions of the Bill governing the functions and powers of the Board will amount to a diminution of administrative control, and this is most undesirable. The Board's powers should explicitly be augmented so that it can serve as an effective body for contributing towards an integrated and purposive regulation of the corporate sector in the public interests. This the urgent need of the hour, as revealed by the experience of the Vivian Bose Commission's inquiries and findings.

IV. *Clause 5.*—I cannot agree with the majority view of the Select Committee that the Government's powers to convert loan capital into equity capital should have no retrospective effect save and except in the case of a company which has made default in repayment, and continues to do so even after notice. My views in this matter are incorporated in the separate Minute of Dissent signed by Shri Vidyalkar and myself.

NEW DELHI;

INDRAJIT GUPTA.

Dated the 9th December, 1963.

Bill No. 46A of 1963

THE COMPANIES (AMENDMENT) BILL, 1963

(AS REPORTED BY THE SELECT COMMITTEE)

(Words side-lined or under-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 1963. Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

1 of 1956 2. In section 2 of the Companies Act, 1956 (hereinafter referred to as the principal Act),— Amendment of section 2.

(a) after clause (10), the following clause shall be inserted, namely:—

“(10A) “Company Law Board” means the Board of Company Law Administration constituted under section 10E;”

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753 Got I. Ex.—3.

(b) after clause (49), the following clause shall be inserted, namely:—

‘(49A) “Tribunal” means the Tribunal constituted under section 10A;’.

Insertion
of new sec-
tions after
section 10
in Part I.

3. After section 10 of the principal Act, the following sections shall be inserted in Part I, namely:—

Constitu-
tion of
Tribunal.

‘10A. (1) The Central Government may, by notification in the Official Gazette, constitute a Tribunal consisting of as many members as it thinks fit, to exercise and discharge—

(a) the powers and functions conferred on such Tribunal by or under this Act;

(b) all or any of the powers and functions conferred on the Court by or under section 155, section 203 in so far as it relates to the granting of leave under that section, section 240, and sections 397 to 407, which the Central Government may, from time to time, by notification in the Official Gazette, specify: 15

* * * *

Provided that where any powers and functions are or become exercisable by the Tribunal by virtue of this section, the Court shall not exercise those powers and functions and any reference to the Court in any of the sections, powers and functions of the Court whereunder have been conferred on the Tribunal, shall be construed as a reference to the Tribunal.

(2) The members of the Tribunal shall be persons who have, in the opinion of the Central Government, * * * adequate knowledge of, and experience in,—

(a) law, or

(b) matters of accountancy, or

(c) administration or management of companies and law relating thereto. 30

(3) The Central Government shall * * * appoint one of the members of the Tribunal having knowledge of, and experience in law, who—

(a) is or has been a Judge of a High Court, or 35

(b) is qualified for appointment as Judge of a High Court,

to be the chairman of the Tribunal.

(4) The chairman and other members of the Tribunal shall receive from the Central Government such remuneration, and shall be governed by such conditions of service, as the Central Government may determine:

Provided that the remuneration of the chairman or any other member shall not be varied to his disadvantage after his appointment.

(5) Nothing in this section shall derogate from the powers and functions of the Court in relation to any proceeding pending before the Court immediately before such powers and functions are or become exercisable by the Tribunal by virtue of this section and the Court shall dispose of such proceeding accordingly.

(6) The provisions of this Act shall apply in relation to the enforcement of any order of the Tribunal as if such order were an order of the Court under this Act.

Explanation.—In this section, "Court" means the Court as defined in sub-clause (a) of clause (11) of section 2 and, where the powers and functions have been conferred expressly by any section on a Judge of a High Court, includes such Judge.

10B. (1) The powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the chairman of the Tribunal from among the members thereof.

Procedure
of Tri-
bunal

(2) Every such Bench shall consist of such number of members, not being less than two, as the Central Government may, by rules made under this Act, determine and at least one of such members shall be a person having knowledge of, and experience in, law.

(3) If during the course of any proceedings, any member of the Tribunal is for any reason unable to perform his functions or relinquishes his membership of the Tribunal, the Central Government may appoint another member in his place in accordance with the provisions of this Act and upon his joining the Tribunal the proceedings shall be continued as if he had been on the Tribunal from the commencement of the proceedings.

(4) In case of difference of opinion among the members of a Bench, * * * the opinion of the majority shall prevail and orders of the Bench shall be expressed in terms of the views of the majority:

Provided that if the members of the Bench are equally 5 divided in opinion on any point, they shall prepare a statement on the point and refer the same to the chairman of the Tribunal for the hearing of such point by one or more of the other members of the Tribunal and such point shall be decided according to the opinion of the majority of the members of the Tribunal 10 who have heard it, including those who first heard it.

(5) Subject to the provisions of this Act and the rules made thereunder, the Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers and the discharge of its 15 functions, including the places at which the Benches shall hold their sittings.

Powers of
Tribunal.

10C. (1) The Tribunal shall have the powers which are vested in a court under the Code of Civil Procedure, 1908, when 5 of 1908. trying a suit, in respect of the following matters, namely:— 20

(a) discovery and inspection of documents or other material objects producible as evidence,

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses,

(c) compelling the production of documents or other 25 material objects producible as evidence and impounding the same,

(d) examining witnesses on oath,

(e) granting adjournments,

(f) reception of evidence taken on affidavit, 30

(g) issuing commissions for the examination of witnesses, and summoning and examining *suo motu* any person whose evidence appears to the Tribunal to be material.

(2) Where the Tribunal has reason to believe that any place 35 is used for the deposit or custody of any document or thing

which may be material for the purposes of any proceeding before it, the Tribunal may by its warrant authorise and direct any police officer not below the rank of a sub-inspector—

5 (a) to enter that place with such assistance as may be required,

(b) to search the same in the manner specified in the warrant,

10 (c) to take possession of any documents or things therein found and to prepare a list of the same and to dispose them of in accordance with the provisions hereinafter contained.

15 (3) When in the execution of a search warrant under sub-section (2) any documents or things for which search is made are found, such documents or things, together with the list of the same, shall immediately be taken before the Tribunal.

3 of 1898. (4) The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to a search directed, and a search warrant issued, under sub-section (2) as they apply to a search and a search warrant under section 98 of that Code.

20 (5) The Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, and every proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.

45 of 1860.

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10D. (1) An appeal shall lie to the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, only on questions of law arising,—

Appeals against decisions, etc., of the Tribunal.

30 (a) in cases against managerial personnel falling under Chapter IVA of Part VI, out of any finding of the Tribunal under section 388D; and

(b) in cases not falling under that Chapter, out of any decision, finding or order of the Tribunal.

35 (2) Every such appeal shall be heard by a Bench of not less than two Judges of the High Court.

(3) Every such appeal shall be filed within a period of sixty days from the date of communication to the appellant of the decision, finding or order of the Tribunal:

Provided that the appeal may be admitted after the expiry of the aforesaid period if the appellant satisfies the High Court that he had sufficient cause for not preferring the appeal within that period.'

Insertion of
new Part
1A after
Part I

4. In the principal Act, after Part I, the following Part and section shall be inserted, namely:—

'PART 1A

10

BOARD OF COMPANY LAW ADMINISTRATION

Constitu-
tion of
Board of
Company
Law Ad-
ministra-
tion.

10E. (1) As soon as may be after the commencement of the Companies (Amendment) Act, 1963, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration to exercise and discharge such powers and functions conferred on the Central Government by or under this Act or any other law as may be delegated to it by that Government.

(2) The Company Law Board shall consist of such number of members, not exceeding five, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette.

(3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.

(4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.

(5) The procedure of the Company Law Board shall be such as may be prescribed.

(6) In the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government.'

5. In section 81 of the principal Act,—

Amend-
ment of
section 81.

(a) for the proviso to sub-section (3), the following proviso shall be substituted, namely:—

“Provided that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term—

(a) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules, if any, made by that Government in this behalf; and

(b) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans.”;

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(4) Notwithstanding anything contained in the foregoing provisions of this section, where any debentures have been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963, the Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion:

Provided that no order under this sub-section shall be made in respect of debentures issued or loans obtained by the company before the commencement of the Companies (Amendment) Act, 1963 unless—

(a) there has been default in repayment of the amount of the debentures or loans or any instalment thereof, or in payment of any interest or other amount in relation thereto or in compliance with any other terms of issue of such debentures or of such loans, and

(b) notice in writing has been given by the Government to the company to remedy the default within a period of three months from the date of service of such notice and the company fails to remedy such default within that period.

(5) In determining the terms and conditions of such conversions, the Central Government shall have due regard to the following circumstances, that is to say, the financial position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan liabilities, its reserves, its profits during the preceding five years and the current market price of the shares in the company.

(6) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days from the date of communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government under sub-section (4) shall be final and conclusive.

Amend-
ment of
section 153.
Insertion
of new
sections
after
section
153.
Appoint-
ment of
public
trustee.
Decla-
ration as
to shares
and deben-
tures held
in trust.

6. In section 153 of the principal Act, the words "or be receiv-
able by the Registrar" shall be omitted.

7. After section 153 of the principal Act, the following sections shall be inserted, namely:—

"153A. The Central Government may, by notification in the Official Gazette, appoint a person as public trustee to discharge the functions and to exercise the rights and powers conferred on him by or under this Act.

153B. (1) Notwithstanding anything contained in section 153, where any shares in, or debentures of, a company are held in trust by any person (hereinafter referred to as the trustee), the trustee shall, within such time and in such form as may be prescribed, make a declaration to the public trustee.

(2) A copy of the declaration made under sub-section (1) shall be sent by the trustee to the company concerned, within twenty-one days, after the declaration has been sent to the public trustee.

5 (3) (a) If a trustee fails to make a declaration as required by this section, he shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing failure, with a further fine which may extend to one hundred rupees for every day during which the failure continues.

10 (b) If a trustee makes in a declaration aforesaid any statement which is false and which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years and also with fine.

(4) The provisions of this section and section 187B shall not apply in relation to a trust—

(a) where the trust is not created by instrument in writing; or

15 (b) even if the trust is created by instrument in writing, where the trust money invested in shares in, or debentures of, a company—

(i) does not exceed one lakh of rupees, or

20 (ii) exceeds one lakh of rupees but does not exceed either five lakhs of rupees or twenty-five per cent of the paid-up share capital of the company, whichever is less.”.

8. After section 187A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section after section 187A.

25 “187B. (1) Save as otherwise provided in section 153B but notwithstanding anything contained in any other provisions of this Act or any other law or any contract, memorandum or articles, where any shares in a company are held in trust by a person (hereinafter referred to as trustee), the rights and powers (including the right to vote by proxy) exercisable at any meeting of the company or at any meeting of any class of members of the company by the trustee as a member of the company shall—

Exercise of voting rights in respect of shares held in trust.

30 (a) cease to be exercisable by the trustee as such member, and

35 (b) become exercisable by the public trustee.

(2) The public trustee may, instead of himself attending the meeting, and exercising the rights and powers, as aforesaid, appoint as his proxy an officer of Government or the trustee himself to attend such meeting and to exercise such rights and powers in accordance with the directions of the public trustee:

Provided that where the trustee is appointed by the public trustee as his proxy, the trustee shall be entitled, notwithstanding anything contained in any other provisions of this Act, to exercise such rights and powers in the same manner as he would have been but for the provisions of this section.

(3) The public trustee may abstain from exercising the rights and powers conferred on him by this section if in his opinion the objects of the trust or the interests of the beneficiaries of the trust are not likely to be adversely affected by such abstention.

(4) If for any reason the trustee considers that the public trustee should not abstain from exercising the rights and powers conferred on him by this section and the exercise of such rights and powers is necessary in order to safeguard the objects of the trust or the interests of the beneficiaries of the trust, he may by writing communicate his views in this behalf to the public trustee but the public trustee may in his discretion either accept such views or reject the same.

(5) No suit, prosecution or other legal proceeding shall lie against the public trustee at the instance of the trustee or any person on his behalf or any other person on the ground that the public trustee has abstained from exercising the rights and powers conferred on him by this section.

(6) In order to enable the public trustee to exercise the rights and powers aforesaid, the public trustee shall also be entitled to receive and inspect all books and papers under this Act, which a member is entitled to receive and inspect."

Insertion
of new
Chapter
and sec-
tions in
Part VI.

9. In the principal Act, in Part VI, after Chapter IV, the following Chapter and sections shall be inserted, namely:—

"CHAPTER IVA.—POWERS OF CENTRAL GOVERNMENT TO REMOVE
MANAGERIAL PERSONNEL FROM OFFICE ON THE RECOMMENDATION OF
THE TRIBUNAL.

388B. (1) Where in the opinion of the Central Government there are circumstances suggesting—

Reference
to Tri-
bunal of
cases
against
managerial
personnel.

5 (a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persis-
tent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or

10 (b) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or

15 (c) that a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

20 (d) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

25 the Central Government may state a case against the person aforesaid and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a finding as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

30 (2) Every case under sub-section (1) shall be stated in the form of an application which shall be presented to the Tribunal or such officer thereof as it may appoint in this behalf.

(3) The person against whom a case is referred to the Tribunal under this section shall be joined as a respondent to the application.

(4) Every such application—

35 (a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry, and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

5 of 1908.

(5) The Tribunal may at any stage of the proceedings allow the Central Government to alter or amend the application in such manner and on such terms as may be just, and all such alterations or amendments shall be made as may be necessary for the purpose of determining the real questions in the inquiry.

Interim
order by
Tribunal.

388C. (1) Where during the pendency of a case before the Tribunal it appears necessary to the Tribunal so to do in the interest of the members or creditors of the company or in the public interest, the Tribunal may on the application of the Central Government or on its own motion, by an order—

(a) direct that the respondent shall not discharge any of the duties of his office until further orders of the Tribunal, and

(b) appoint a suitable person in place of the respondent to discharge the duties of the office held by the respondent subject to such terms and conditions as the Tribunal may specify in the order.

(2) Every person appointed under clause (b) of sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Findings of
the Tri-
bunal.

388D. At the conclusion of the hearing of the case, the Tribunal shall record its findings stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

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Power of
Central
Govern-
ment to
remove
managerial
personnel
on the
basis of
Tribunal's
findings.

388E. (1) Notwithstanding any other provision contained in this Act, the Central Government may, by order, remove from office any director, or any other person concerned in the conduct and management of the affairs, of a company, against whom there is a finding of the Tribunal or a decision of a High Court under this Chapter:

Provided that where a firm or a body corporate is concerned in the conduct and management of the affairs of a company as its managing agent or secretaries and treasurers, and the finding of the Tribunal or the decision of a High Court is against any partner in such firm, or any director of, or any person holding a general power of attorney from, such body

corporate, the Central Government may also remove from the office of managing agent or secretaries and treasurers, such firm or body corporate.

5 (2) No order under this section shall be made against any person unless he has been given a reasonable opportunity to show cause against the same:

Provided that no matter shall be raised by such person before the Central Government if such matter has been decided by the Tribunal or the High Court.

10 (3) The person against whom an order of removal from office is made under this section shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company during a period of five years from the date of the order of removal:

15 | Provided that the Central Government may, with the previous concurrence of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

20 (4) Notwithstanding anything contained in any other provision of this Act, or any other law or any contract, memorandum or articles, on the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

25 (5) On the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, the company may, with the previous approval of the Central Government, appoint another person to that office in accordance with the provisions of this Act.”

10. In section 397 of the principal Act—

Amend-
ment of
section 397.

35 (a) in sub-section (1), for the words “are being conducted”, the words “are being conducted in a manner prejudicial to public interest or” shall be substituted;

(b) in sub-section (2), in clause (a), for the words “are being conducted”, the words “are being conducted in a manner prejudicial to public interest or” shall be substituted.

Amend-
ment of
section 398.

11. In sub-section (1) of section 398 of the principal Act—

(a) in clause (a), for the words “are being conducted”, the words “are being conducted in a manner prejudicial to public interest or” shall be substituted;

(b) in clause (b), for the words “will be conducted”, the words “will be conducted in a manner prejudicial to public interest or” shall be substituted. 5

Amend-
ment of
section 408.

12. In sub-section (1) of section 408—

(a) after the words “if the Central Government”, the words “of its own motion or” shall be inserted; 10

(b) after the words “interests of the company”, the words “or to public interest” shall be inserted.

* * * * *

Insertion
of new
section
after
section 635.

13. After section 635 of the principal Act, the following section shall be inserted, namely:— 15

Protection
of acts
done in
good faith.

“635A. No suit, prosecution or other legal proceeding shall lie against officers of Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.”

Amend-
ment of
section
637.

14. For sub-sections (1) and (2) of section 637 of the principal Act, the following sub-sections shall be substituted, namely:— 20

“(1) The Central Government may, by notification in the Official Gazette and subject to such conditions, restrictions and limitations as may be specified therein, delegate—

(a) any of its powers or functions under this Act (other than the power to appoint a person as public trustee under section 153A and the power to make rules) to the Company Law Board; 25

(b) any of its powers or functions under this Act, other than those specified in sub-section (2), to such other authority or such officer as may be specified in the notification. 30

(2) The powers and functions which cannot be delegated under clause (b) of sub-section (1) are those conferred by or mentioned in the following provisions of this Act, namely, sections 10, 81, 89(4), 211(3) and (4), 212, 213, 235, 35

237, 239, 241, 242, 243, 244, 245, 247, 248, 249, 250, 259, 268, 269, 274(2), 295, 300, 310, 311, 324, 326, 328, 329, 332, 343, 345, 346, 347 (2), 349, 352, 369, 372, 396, 399 (4) and (5), 401, 408, 409, 410, 411(b), 448, 609, 613, 620, 638, 641 and 642.

- 5 | (2A) The provisions of this Act shall apply in relation to the Company Law Board as they apply in relation to the Central Government in respect of any matter in relation to which the powers and functions of the Central Government have been delegated to the Company Law Board."

M. N. KAUL,
Secretary.

